

St. Peters Manor, Inc. d/b/a St. Peters Manor Care Center and Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 14-RC-9543

May 28, 1982

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered determinative challenges in an election held on January 15, 1982,¹

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 20 for, and 17 against, the Petitioner; there were 3 challenged ballots. Since we have adopted the Acting Regional Director's recommendation to sustain the challenge to Haton's ballot, the remaining challenged ballots are not determinative.

² The Employer, in support of its exception to the Acting Regional Director's recommendation that the challenge to the ballot of Winona Haton be sustained, has submitted an affidavit of James S. Sidman. This affidavit is dated February 18, 1982, 8 days after the issuance of the Acting Regional Director's report. Accordingly, this affidavit was not timely submitted to the Regional Director as required by Sec. 102.69(c) of the Board's Rules and Regulations, Series 8, as amended. Furthermore, the Employer does not contend that the evidence set forth in the affidavit was newly discovered or previously unavailable. We therefore have not considered this affidavit. In any event, even were we to consider Sidman's affidavit, we would find it insufficient to warrant reversal of the Acting Regional Director's findings or to warrant a hearing.

³ We find that *Banner Bedding, Inc.*, 214 NLRB 1013 (1974), relied on by the Employer, is distinguishable from the instant case. In *Banner Bedding*, the Board gave effect to an oral agreement which had been reached prior to the execution of the stipulation and which was a "critical predi-

and the attached Acting Regional Director's report recommending disposition of same. [Omitted from publication.] The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Acting Regional Director's findings² and recommendations.³

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Miscellaneous Drivers and Helpers Union, Local No. 610, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time employees including LPN's employed at the Employer's 150 Spencer Road, St. Peters, Missouri, facility, excluding business office clerical employees, professional employees, guards and supervisors as defined in the Act.

cate" to that stipulation. Here, the alleged oral agreement was reached well after the stipulation had been executed and, indeed, just moments before the election was to commence. Furthermore, unlike *Banner Bedding*, here the alleged oral agreement was directly contrary to the clear and unequivocal language of the stipulation. Moreover, as the Acting Regional Director found, there is no evidence in the record that the parties did not intend to exclude business office clericals from the unit at the time the stipulation was entered. Under these circumstances, the Employer's reliance on *Banner Bedding* is misplaced.